

Certification Agreement for Applicants and Manufacturers

THIS AGREEMENT made the _____ day of _____, 20____, by and between:

INTERTEK TESTING SERVICES NA, INC. having offices at

545 E. Algonquin Rd, Arlington Heights, IL 60005 USA ("Intertek")

and "**Company**", having principle place of business at

Company Legal Entity Name	
Street	
City, State/Province, Postal Code	
Country	

Company is entering the Certification Agreement as a(n): Applicant* Manufacturer*.

** See definitions below. If the entity is both the Applicant and Manufacturer, please check both boxes. If the Applicant and Manufacturer are different, please check the box that is applicable.*

RECITALS

Intertek provides a service for evaluating whether products provided by the Applicant comply with designated standards or specified requirements. Subject to the terms of this Certification Agreement, products found to be in compliance by Intertek may be eligible for inclusion on a list maintained by Intertek for Products to display a Certification Mark owned by Intertek.

The Applicant desires to submit or has submitted certain devices, equipment, materials, or systems manufactured by the Applicant or the Manufacturer if different, to Intertek for evaluation in order that the product may be considered for Listing and Labeling by Intertek.

If the submitted product is found to be eligible for Certification, this Certification Agreement shall be executed by Intertek and the Applicant (and the Manufacturer, if applicable) setting forth the terms and conditions to which the parties hereto must adhere.

NOW THEREFORE, for and in consideration of the mutual covenants herein expressed and other lawful and valuable consideration, the parties hereto agree as follows:

1. DEFINITIONS

- 1.1 Applicant.** The term Applicant shall mean the company who submitted the product for evaluation and certification and owns rights to Listing Reports.
- 1.2 Manufacturer.** The term Manufacturer shall mean the company who carries out or controls certain stages in the manufacture, assessment, handling, and storage of a product that enables it to accept responsibility for continued compliance of the product with the relevant requirements and undertakes all obligations to apply the certification labels.
- 1.3 Company.** The term Company shall mean both Applicant and/or Manufacturer.
- 1.4 Authorization to Mark.** The term Authorization to Mark ("ATM") shall mean a written document from Intertek that authorizes the Manufacturer to apply an Intertek certification mark to a specific product.
- 1.5 Certification Mark.** The term Certification Mark ("Mark") shall refer to any common law or registered trademark owned by Intertek, or its affiliates, used in the certification of Product.
- 1.6 Follow-up Service.** The term Follow-up Service shall refer to the process of monitoring the Company's compliance with the Intertek Requirements.

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- 1.7 Intertek Requirements.** The term Intertek Requirements shall mean (a) the requirements contained in the Listing Report; (b) the standard(s), if any, applicable to the Product; (c) the terms of this Certification Agreement; and (d) any third party requirements separately applied as a condition of the Listing.
- 1.8 Labeling.** The term Labeling shall refer to the process of applying the Mark to the Product, whether the Mark is applied to the Product by a separable label, directly on the product, or by other media as authorized by Intertek.
- 1.9 Listing.** The term Listing shall mean the process of preparing and including the Product in the published directory of Intertek certified products.
- 1.10 Listing Report.** The term Listing Report shall mean the document prepared by Intertek, also known as Constructional Data Report (CDR), which identifies the Company, the Product, the requirements specific for the Product, including but not limited to, identification of standard(s), test protocols and the type and form of Mark which must be used on or in connection with the Product and related information.
- 1.11 Product.** The term Product ("Product") shall mean an Applicant's device, equipment, material, or system that has been submitted for testing or evaluation, and found to be in compliance with Intertek Requirements and approved for Listing.

2. **CERTIFICATION**

2.1 Testing and Evaluation. Intertek is an independent laboratory providing testing and evaluation services to determine whether representative samples of a product comply with designated national and international standards, specifications, and/or codes. Intertek does not publish standards, specifications, and/or codes, or warrant to the Company that the standard used for the evaluation is adequate. Company understands and agrees that Intertek has only tested or evaluated the submitted Product samples and does not guarantee or warrant the quality or compliance of all units of the Product manufactured or produced by the Applicant and/or the Manufacturer. Company further acknowledges that as an independent laboratory, Intertek assumes no responsibility for the design of the Product.

2.2 Company Obligations. Company understands its obligations pursuant to this Certification Agreement in order to maintain eligibility for Listing, and warrants that it shall comply with the following provisions:

- (a) Company agrees to notify Intertek, without delay, of changes that may affect its ability to comply with this Certification Agreement or maintain eligibility for Listing. Changes may include, but are not limited to:
- Modifications or changes to the Product such that the Product no longer meets the requirements of the Listing Report for the Product
 - Modifications to the Production Method
 - Changes to the legal, commercial, organizational status or ownership
 - Changes to Company or Manufacturer address
 - Major Changes to the Quality Management System of the Company
- If the Company wishes to make such modifications or changes, the Company must first either obtain the approval of Intertek or discontinue use of the Mark. The Product may no longer be eligible for Listing if the above modifications or changes to the Product, or the Company, have occurred after Intertek's testing or evaluation.
- (b) Upon request, the Company agrees that it shall retain or make available a sample of the certified Product from the most current production.
- (c) Company agrees to notify Intertek in writing of any product recall or reports that it receives of serious personal injury or property damage involving the Product.
- (d) Company shall notify Intertek of any labeled Product which has left the control of the Company that does not comply with Intertek Requirements.
- (e) Company warrants that a quality control program is, or will be, established and maintained to ensure Product compliance with the Intertek Requirements.
- (f) If re-evaluation and/or investigation of the product is required as a result of modification to the Product without prior notification by the Company and approval by Intertek, the Applicant

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shall be subject to applicable fees for these services.

- (g) If the company provides copies of the certification documents to others, the documents shall be reproduced in their entirety.
- (h) Company agrees to fully cooperate with Intertek in any investigation of complaint including, but not limited to, promptly providing sample(s), photograph(s), schematic(s), and documentation related to product production, inventory, and shipment.
- (i) Company shall maintain written records of all complaints made known to it relating to compliance with certification requirements and the actions taken with respect to such complaints and any deficiencies found in products that affect compliance with the requirements for certification. Company will promptly provide these records to Intertek upon request.

2.3 Reservation of Rights. Intertek reserves the right, upon reasonable written notice to the Applicant, to reevaluate the Product at the Applicant's expense. This re-evaluation may be the result of Follow-up Service (Variation Notice), a revision of the applicable standard (Standard Update Notice ("SUN")), new information regarding the characteristics of the material used in the Product, or other information (including administrative changes) that raises a question concerning the conformance of the Product to Intertek Report Requirements. Such reevaluation may require Intertek to review the Listing Report, reevaluate the product and update our records and be subject to applicable fees.

2.4 Revision or Withdrawal of the Intertek Requirements. Intertek reserves the right, upon reasonable notice to the Applicant, to revise or withdraw the Intertek Requirements to the extent required by applicable statutory guidelines or standards. If the Intertek Requirements are revised, the Company shall be entitled to continue Listing and Labeling of the Product upon a demonstration to the satisfaction of Intertek that the Product complies with the revised Intertek Requirements. If the Intertek Requirements are withdrawn, the Company's right to the Listing and Labeling of the Product shall terminate pursuant to the terms of Article 6 of this Certification Agreement. In the case of a revision or withdrawal of Intertek Requirements, Intertek shall provide a notice specifying a reasonable date by which the Product must meet the revised Intertek Requirements or for such termination.

2.5 Third Parties. Applicant agrees that Intertek has entered into a contractual relationship with the Applicant to perform testing or evaluation services on the Product. Intertek agrees to perform such services with due care. Intertek does not guarantee or warrant that third parties will accept or recognize the results obtained by Intertek or the Intertek certification of the Product.

3. LISTING AND LABELING

3.1 Ownership of the Mark. Ownership of the Mark and all trademark rights in the Mark remain in Intertek, even if it is used on the Product. The Mark shall only be applied to a Product that complies with the Intertek Requirements and such Mark shall be applied as specified in the Listing Report. The Mark may be applied only to those models and brands that are specifically named in the Listing Report at the factory receiving active Follow-up Service and as noted on the Authorization to Mark. Except as provided herein and as indicated in Article 3.2, any other use of the Mark, or the Intertek name, on the Product is expressly prohibited.

3.2 Advertising. Intertek shall allow the Company to refer to Intertek and the Mark in advertising and promotional material for the Product, contingent upon the Company obtaining the prior, express, written approval of Intertek.

3.3 Follow-up Service. As a part of the Listing and Labeling of the Product, the Company shall cooperate with the Intertek representatives who conduct Follow-up Service and make all necessary arrangements for the participation of observers. Follow-up Service may include factory audits at any time during business hours and such Intertek representatives, shall have free, unannounced, and immediate access to the Company's premises wherein the Product, or components thereof, may be fabricated, processed, finished, stored, or located. Intertek representatives shall comply with factory policies as required while on premises. Follow-up Service is intended to allow Intertek to monitor the Company's compliance with maintaining continuing

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conformity of the Product to the Intertek Requirements, and to control the use of Intertek's Marks. The factory audits are not intended to satisfy or otherwise replace Company's responsibility to maintain its quality control program and to ensure that the Product remains in compliance with the Intertek Requirements. Follow-up Service may also include Company questionnaires, and/or the Company's warranty of conformity.

4. INDEMNIFICATION AND LIABILITY

4.1 Indemnification. Company agrees to hold Intertek harmless and to defend and indemnify Intertek against any liability, loss, or damage from claims, demands, costs (including legal fees), or judgments arising out of any negligent or intentional acts of the Company, or claims from third parties relating to the Product or arising from the use of the Mark.

4.2 Liability. Intertek will not, under any circumstances, be liable to the Company for any indirect, special, punitive, or consequential damages, or any third party claims which may arise as a result of the services provided in this Certification Agreement. The maximum aggregate liability of Intertek for damages in connection with this Certification Agreement shall not exceed the latest annual fee paid to Intertek by the Company.

5. FAILURE TO COMPLY WITH INTERTEK REQUIREMENTS

5.1 Remedial Action. In the event that Intertek detects any deviation or variance in the Product from Intertek Requirements, or improper or unauthorized use of the Mark or Intertek name, Intertek will notify the Applicant and require the Company, at its own expense, to undertake corrective action to ensure that the Product complies with Intertek Requirements. Intertek reserves the right, in its sole discretion, to take additional actions as it deems necessary, including but not limited to:

- (a) Suspension or revocation of the Listing and the right to label the Product;
- (b) Withdrawal of the supply of labels and removal of the Mark from non-conforming or unauthorized products;
- (c) Payment of penalty fees (as defined in general information package) and any costs associated with the product investigation by the Applicant;
- (d) Removal of the Product from the published directory of Intertek certified products;
- (e) Termination of this Certification Agreement pursuant to Article 6;
- (f) Notification of regulatory authorities and the public;
- (g) Compliance with any applicable statutes, rules, or regulations.

5.2 Injunctive Relief. Company acknowledges that the manufacture, sale, delivery, shipment, distribution, or promotion of the Product utilizing a Mark would mislead or endanger the public if such Product is not eligible to use the Mark or does not comply with the Intertek Requirements. Company further acknowledges that a breach of this Certification Agreement cannot be adequately compensated by money damages. Company agrees that in the event of a breach of the Certification Agreement, Intertek shall have the right to seek a temporary restraining order to the Company, together with an action for a preliminary and permanent injunction, and such other and further relief as may be provided by law.

5.3 Suspension. Upon Company's failure to comply with any of the requirements of this Certification Agreement or Listing Report, Intertek may issue a letter of suspension which shall notify the Applicant of the nature of the failure and the period of suspension of the Company's right of Labeling. The Applicant is obligated to notify its Manufacturer of the suspension and insure both the Applicant and Manufacturer adhere to all requirements in the letter of suspension including remedial actions. A reinstatement fee may be applied. In the event that the Company fails to take corrective action to resolve the cause of suspension, this Certification Agreement shall be terminated pursuant to Article 6.

5.4 Public Notice. In the event that Intertek has confirmed evidence that the Product in the marketplace has a significant non-conformity, Intertek will contact the Applicant and act in support of remedial steps taken by the Company to address the non-conformity, including, if necessary, public notification and/or a product recall undertaken by the Company. In the event that the

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Company does not take action to address a significant non-conformity related to the Product, Intertek reserves the right to contact appropriate government agencies, other parties in the supply chain and/or issue public notifications advising of the non-conformity pursuant to Article 5.1(f) above.

6. TERMINATION OF THE AGREEMENT

6.1 Termination By Either Party. Either party may, for any reason, terminate this Certification Agreement, as to any Product, upon not less than sixty (60) days written notice to the other party. Such notice shall designate a termination date and the notice period shall be deemed to commence upon the date of mailing of the notice to the other party by registered or certified mail, return receipt requested or by courier with confirmed delivery.

6.2 Intertek Right To Terminate. Intertek may terminate this Certification Agreement, as to any Product, without prejudice to any other rights or remedies that Intertek may have, upon either of the following:

- (a) Immediately upon written notice, if Intertek determines that the Product fails to comply with the Intertek Requirements and such defect was not cured within a reasonable period of time;
- (b) Company is in default pursuant to Article 7.3;
- (c) Thirty (30) days after the Company receives written notice in the event of: (i) the filing of a voluntary or involuntary petition in bankruptcy by the Company; (ii) the making of any arrangement or composition with creditors by the Company; (iii) the appointment of a receiver for the Company; or (iv) the voluntary or involuntary liquidation of the business of the Company. The Company will notify Intertek within seven (7) days of notice of one of these events.

6.3 Company Obligations Upon Termination. Upon termination of this Certification Agreement, Company shall:

- (a) Discontinue the use of the Mark on the Product or Company's promotional material or advertising.
- (b) Allow Intertek to perform a final factory inspection to record final production status and to recover all unused Intertek Certification Marks upon notification of termination of the Authorization to Mark. Fees for a final inspection will be billed in accordance with Article 7.3 of this Certification Agreement.
- (c) Promptly return to Intertek all Marks, Labeling material, and the Listing Report, and warrant in writing the date of last use of the Mark.
- (d) Continue to honor the terms of Article 4 of this Certification Agreement concerning indemnification and liability, which terms shall survive the termination of this Certification Agreement.
- (e) Pay any remaining outstanding charges owing to Intertek immediately.
- (f) Applicant is obligated to notify its Manufacturer of the termination and insure both the Applicant and Manufacturer comply with all requirements in this section.

7. ADMINISTRATIVE PROVISIONS

7.1 Confidentiality. Without written authorization from the Applicant, Intertek will not voluntarily disclose to third parties confidential and proprietary information which Applicant provides to Intertek. This obligation shall not apply to information which is already available to the public, or acquired from other sources without confidentiality restrictions, or is required to be disclosed by Intertek to Regulatory Authorities responsible for the acceptance of the Product. Intertek agrees that this obligation to maintain confidentiality shall survive the termination of this Certification Agreement.

7.2 Subpoena. If Intertek is served with a Subpoena, Court Order, or similar document requesting the disclosure of confidential or proprietary information supplied to Intertek by the Company, Intertek shall promptly notify the Applicant. In the event that the Applicant chooses to contest the request, Intertek shall cooperate with the Applicant. The responsibility for contesting the request shall rest

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solely with the Applicant. If the Applicant declines to contest the request or is not successful in contesting the request, Intertek will provide the requested information. Any costs incurred by Intertek in responding to the request, including reasonable attorney's fees, shall be reimbursed by the Applicant immediately upon invoicing by Intertek.

- 7.3 Fees.** Certification fees will be prepaid or billed to the Applicant or a designated payor. Payment shall be due upon presentation of invoices. The Applicant shall be considered in default if the charges are not paid within thirty (30) days, unless other payment terms have been agreed upon. Intertek reserves the right to adjust the billing rate for Certification, and to issue reasonable charges in the event additional costs are incurred by Intertek as a result of Company's failure to adhere to the Intertek Requirements. Additional costs include, but are not limited to, penalty fees for misuse of Mark and costs associated with the product investigation. Certification fees are non-refundable.
- 7.4 No Assignment.** The rights running to the Company under this Certification Agreement may not be assigned to or acquired by any other person or corporation without Intertek's written authorization.
- 7.5 Term.** This Certification Agreement shall continue in effect for a period of one (1) year from the date first above written and shall automatically be renewed thereafter for periods of one (1) year, unless the termination rights provided for in this Certification Agreement are exercised.
- 7.6 Jurisdiction.** This Certification Agreement shall be interpreted in accordance with and governed by the laws of the jurisdiction within which the Intertek office stated in the opening paragraph is located. If the Client is located in China, any dispute or claim arising from or in connection with this Certification Agreement, its breach, its performance or non-performance shall be submitted to the China International Economic and Trade Arbitration Commission ("CIETAC") Beijing Office for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral tribunal shall consist of three (3) arbitrators. Intertek on the one part and the Client on the other part shall each appoint one arbitrator. The parties shall appoint the third arbitrator. If the parties fail to agree on the third arbitrator within fifteen (15) days from the date on which the respondent receives the notice of arbitration, the parties hereby designate the Chairman of CIETAC as the appointing authority hereunder provided that the Chairman shall select an arbitrator who satisfies the qualifications in the preceding sentence. The language to be used in the arbitral proceedings shall be Chinese and English. Each version shall have the equal validity and legal effect. The arbitral award is final and binding upon both parties.

This Agreement is accepted and duly executed by:

Intertek Testing Services NA, Inc.	
By	
Authorized Intertek Signatory	
Print Name	
Title	
Date	

Company	
By	
Proprietor, Partner or Authorized Officer - Signature	
Print Name	
Title	
Date	